

AMENDED IN SENATE JANUARY 9, 2002

AMENDED IN SENATE MARCH 27, 2001

SENATE BILL

No. 17

**Introduced by Senator Figueroa
(Coauthor: Senator Karnette)**

(Coauthors: Assembly Members Alquist, Aroner, Bates, Havice,
Keeley, Richman, Shelley, and Strom-Martin)

December 4, 2000

An act to ~~add Article 8 (commencing with Section 17590) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to advertising; amend Sections 7085 and 7091 of, to add Section 7122.2 to, and to repeal Section 7085.8 of, the Business and Professions Code, relating to contractors.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 17, as amended, Figueroa. ~~Unsolicited and unwanted telephone solicitations~~ Arbitration of contractors disputes.

Existing law, the Contractors' State License Law, provides for arbitration of disputes arising out of cases filed with or by the Contractors' State License Board. The registrar is the executive officer who carries out the board's administrative duties and tasks delegated by the board, and is authorized to issue a citation for a violation of specified provisions that may result in the assessment of a civil penalty.

Existing law authorizes the registrar to refer specified complaints, where the licensee is in good standing at the time of the referral, to arbitration, with the concurrence of both the licensee and the complainant, if there is evidence that the complainant has suffered or is likely to suffer damages greater than \$5,000 and less than \$50,000.

The registrar is required to refer these complaints to arbitration, where the licensee is in good standing at the time of the referral, if the contract price is equal to or less than \$5,000 or if the demand for damages is equal to or less than \$5,000. Existing law also requires that an accusation or citation against a licensee be filed by the registrar within a specified time period.

This bill would change the amount in dispute requirement for mandatory arbitration to \$7,500 or less, and would require that referrals to the arbitration program be subject to the same statute of limitation as are accusations or citations by the registrar. The bill would also remove the requirement that a licensee be in good standing at the time of a referral in order to qualify for referral to arbitration. The bill would provide that the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been referred to arbitration does not relieve the qualifying partner, responsible managing officer, or responsible managing employee from responsibility for complying with an award rendered as a result of an arbitration referral. In addition, the bill would make a nonsubstantive change.

~~Existing law prohibits certain unfair business practices, including certain advertising practices.~~

~~This bill would require the Department of Consumer Affairs to maintain a “do not call” list, containing the telephone numbers of telephone subscribers who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors. It would prohibit, subject to certain exceptions, a telephonic solicitor from calling any telephone number on the then current “do not call” list to, among other things, seek to sell or lease any consumer goods or services. It would also prohibit persons who sell, lease, or rent telephone solicitation lists, except for directory assistance and telephone directories sold by telephone companies, from including in their lists telephone numbers that appear on the then current “do not call” list. Fees paid by telephone solicitors would be deposited in the Special Telephone Solicitors Fund created by the bill.~~

~~Existing law makes it a crime to violate any of the provisions governing advertising. By adding these new prohibitions to those provisions, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.~~



~~Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~—no.
State-mandated local program: ~~yes~~—no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Article 8 (commencing with Section 17590) is~~
2 ~~SECTION 1. Section 7085 of the Business and Professions~~
3 ~~Code is amended to read:~~
4 7085. (a) After investigating any verified complaint alleging
5 a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and
6 any complaint arising from a contract involving works of
7 improvement as defined in Section 7151 and finding a possible
8 violation, the registrar may, with the concurrence of both the
9 licensee and the complainant, refer the alleged violation, and any
10 dispute between the licensee and the complainant arising
11 thereunder, to arbitration pursuant to this article, provided the
12 registrar finds that:
13 (1) There is evidence that the complainant has suffered or is
14 likely to suffer material damages as a result of a violation of
15 Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint
16 arising from a contract involving works of improvement as
17 defined in Section 7151.
18 (2) There are reasonable grounds for the registrar to believe
19 that the public interest would be better served by arbitration than
20 by disciplinary action.
21 (3) The licensee does not have a history of repeated or similar
22 violations.
23 (4) The licensee was in good standing at the time of the alleged
24 violation, ~~and is in good standing at the time of referral to~~
25 ~~arbitration.~~
26 (5) The licensee does not have any outstanding disciplinary
27 actions filed against him or her.
28 (6) The parties have not previously agreed to private arbitration
29 of the dispute pursuant to contract or otherwise.
30 (7) The parties have been advised of the provisions of Section
31 2855 of the Civil Code.



1 For the purposes of paragraph (1), “material damages” means
2 damages greater than ~~five thousand dollars (\$5,000)~~ *seven*
3 *thousand five hundred dollars (\$7,500)* and less than fifty
4 thousand dollars (\$50,000).

5 (b) In all cases in which a possible violation of the sections set
6 forth in paragraph (1) of subdivision (a) exists and the contract
7 price is equal to or less than ~~five thousand dollars (\$5,000)~~ *seven*
8 *thousand five hundred dollars (\$7,500)*, or the demand for
9 damages is equal to or less than ~~five thousand dollars (\$5,000)~~
10 *seven thousand five hundred dollars (\$7,500)* regardless of the
11 contract price, the complaint shall be referred to arbitration,
12 utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of
13 subdivision (a).

14 SEC. 2. *Section 7085.8 of the Business and Professions Code*
15 *is repealed.*

16 ~~7085.8. Any action of the registrar issued pursuant to this~~
17 ~~article shall be subject to Section 7013.~~

18 SEC. 3. *Section 7091 of the Business and Professions Code is*
19 *amended to read:*

20 7091. (a) A complaint against a licensee alleging
21 commission of any patent acts or omissions that may be grounds
22 for legal action shall be filed in writing with the registrar within
23 four years after the act or omission alleged as the ground for the
24 disciplinary action. An accusation or citation against a licensee
25 shall be filed *or a referral to the arbitration program outlined in*
26 *Section 7085 shall be referred* within four years after the patent act
27 or omission alleged as the ground for disciplinary action *or*
28 *arbitration* or within 18 months from the date of the filing of the
29 complaint with the registrar, whichever is later, except that with
30 respect to an accusation alleging a violation of Section 7112, the
31 accusation may be filed within two years after the discovery by the
32 registrar or by the board of the alleged facts constituting the fraud
33 or misrepresentation prohibited by the section.

34 (b) A complaint against a licensee alleging commission of any
35 latent acts or omissions that may be grounds for legal action
36 pursuant to subdivision (a) of Section 7109 regarding structural
37 defects, as defined by regulation, shall be filed in writing with the
38 registrar within 10 years after the act or omission alleged as the
39 ground for the disciplinary action. An accusation and citation
40 against a licensee shall be filed within 10 years after the latent act

1 or omission alleged as the ground for disciplinary action or within
2 18 months from the date of the filing of the complaint with the
3 registrar, whichever is later, except that with respect to an
4 accusation alleging a violation of Section 7112, the accusation
5 may be filed within two years after the discovery by the registrar
6 or by the board of the alleged facts constituting the fraud or
7 misrepresentation prohibited by Section 7112. As used in this
8 section “latent act or omission” means an act or omission that is
9 not apparent by reasonable inspection.

10 (c) An accusation regarding an alleged breach of an express,
11 written warranty for a period in excess of the time periods
12 specified in subdivisions (a) and (b) issued by the contractor shall
13 be filed within the duration of that warranty.

14 (d) The proceedings under this article shall be conducted in
15 accordance with the provisions of Chapter 5 (commencing with
16 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
17 Code, and the registrar shall have all the powers granted therein.

18 (e) Nothing in this section shall be construed to affect the
19 liability of a surety or the period of limitations prescribed by law
20 for the commencement of actions against a surety or cash deposit.

21 *SEC. 4. Section 7122.2 is added to the Business and*
22 *Professions Code, to read:*

23 *7122.2. Notwithstanding Section 7068.2 or any other*
24 *provisions of this chapter, the disassociation of any qualifying*
25 *partner, responsible managing officer, or responsible managing*
26 *employee from a license that has been referred to arbitration*
27 *pursuant to Section 7085 shall not relieve the qualifying partner,*
28 *responsible managing officer, or responsible managing employee*
29 *from responsibility for complying with the award rendered as a*
30 *result of an arbitration referral. Section 7122.5 shall apply to any*
31 *qualifying partner, responsible managing officer, or responsible*
32 *managing employee of a licensee that fails to comply with an*
33 *arbitration award once it is rendered.*

34 ~~added to Chapter 1 of Part 3 of Division 7 of the Business and~~
35 ~~Professions Code, to read:~~

~~Article 8.—Unsolicited and Unwanted Telephone Solicitations~~

~~17590.—(a) There is a compelling state interest to protect the privacy of telephone subscribers who wish to avoid unsolicited and unwanted telephone solicitations.~~

~~(b) The act of becoming a telephone subscriber should not undermine or lessen a person's right of privacy as guaranteed under Section 1 of Article I of the California Constitution.~~

~~17591.—(a) The Department of Consumer Affairs shall maintain a "do not call" list, updated no less frequently than quarterly, which shall set forth the telephone numbers, but not the names or addresses, of telephone subscribers, arranged by area code and numerical sequence, who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors as described in Section 17592. The "do not call" list shall indicate any exclusions designated by the telephone subscriber as provided in subdivision (b).~~

~~(b) Telephone subscribers may place their telephone numbers on the "do not call" list in the manner prescribed by the department. A telephone subscriber may exclude from the coverage of the "do not call" list telephone calls made by the representative of any entity with which the subscriber or any member of the subscriber's household has a bank or investment account, financial relationship, or insurance coverage, or from which the subscriber or household member has previously purchased goods or services. The telephone subscriber shall designate any exclusions in the manner prescribed by the department.~~

~~(c) Telephone solicitors, as defined in Section 17592, may obtain copies of the "do not call" list by paying a fee to the department in an amount not to exceed the costs incurred by the department in the preparation, production, and distribution of that list. The department shall offer a statewide list and shall also offer lists of areas within the state. The determination of the number and definition of areas shall be within the discretion of the department.~~

~~(d) It is the intent of the Legislature that the fees paid to the department by telephone solicitors be utilized by the department in carrying out this article and shall not exceed the actual estimated costs in carrying out this article. The fees obtained by the department shall be deposited in the Special Telephonic Solicitors~~

1 ~~Fund, which is hereby created. All moneys in the fund shall be~~
2 ~~subject to annual appropriation in the Budget Act.~~

3 ~~(e) A person or entity that obtains a “do not call” list shall not~~
4 ~~use the list for any purpose other than to comply with this article.~~

5 ~~(f) The procedures prescribed by the department for the~~
6 ~~implementation of this article shall not be subject to Chapter 3.5~~
7 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
8 ~~2 of the Government Code.~~

9 ~~17592. (a) For purposes of this article, a “telephone~~
10 ~~solicitor” means any person or entity who, on his or her own~~
11 ~~behalf or through salespersons or agents or otherwise, does any of~~
12 ~~the following:~~

13 ~~(1) Seeks to sell or lease any consumer goods or services or~~
14 ~~documents that can be used to obtain goods or services.~~

15 ~~(2) Offers or solicits any extension of credit for personal,~~
16 ~~family, or household purposes.~~

17 ~~(3) Seeks marketing information for any purpose.~~

18 ~~(4) Seeks to sell any investment, insurance, or financial~~
19 ~~services.~~

20 ~~(5) Makes any representation described in Section 17511.1.~~

21 ~~(b) Except for telephone calls described in subdivision (d), no~~
22 ~~telephonic solicitor shall call any telephone number on the then~~
23 ~~current “do not call” list and do any of the following:~~

24 ~~(1) Seek to sell or lease any consumer goods or services or~~
25 ~~documents that can be used to obtain goods or services.~~

26 ~~(2) Offer or solicit any extension of credit for personal, family,~~
27 ~~or household purposes.~~

28 ~~(3) Seek marketing information for any purpose.~~

29 ~~(4) Seek to sell any investment, insurance, or financial~~
30 ~~services.~~

31 ~~(5) Make any representation described in Section 17511.1.~~

32 ~~(c) No person or entity which sells, leases, or rents telephone~~
33 ~~solicitation lists, except for directory assistance and telephone~~
34 ~~directories sold by telephone companies or their affiliates, shall~~
35 ~~include in those lists those telephone numbers that appear on the~~
36 ~~current “do not call” list.~~

37 ~~(d) Subdivision (b) shall not apply to any of the following:~~

38 ~~(1) Telephone calls made in response to the express request of,~~
39 ~~or an advertisement by, the person called.~~

~~(2) Telephone calls made in connection with the collection of a debt or the offer by a creditor to the person called of an extension of credit to pay a delinquent obligation owed by the person called to that creditor.~~

~~(3) Telephone calls that the telephone subscriber excluded from the coverage of the “do not call” list as provided in subdivision (b) of Section 17591.~~

~~(c) Nothing in this section prohibits a telephone solicitor from contacting by mail a telephone subscriber whose telephone number appears on the “do not call” list to obtain the subscriber’s express permission allowing the telephone solicitor to make the type of calls described in subdivision (b).~~

~~17593. (a) Any person who has received a telephone solicitation that is prohibited by Section 17592 may bring a civil action in any court of competent jurisdiction against a telephonic solicitor to recover or obtain any one or more of the following remedies:~~

~~(1) An order to enjoin the violation.~~

~~(2) A civil penalty of up to five hundred dollars (\$500) for the first violation and up to one thousand dollars (\$1,000) for a second and each subsequent violation.~~

~~(3) Court costs, including reasonable attorney’s fees.~~

~~(4) Any other relief that the court deems proper.~~

~~(b) Nothing in this article shall limit the authority of the Attorney General, district attorneys, or city attorneys under Chapter 5 (commencing with Section 17200) of Part 2 or under this part.~~

~~(c) The rights, remedies, and penalties established by this article are in addition to the rights, remedies, or penalties established under other laws.~~

~~SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within~~

1 ~~the meaning of Section 6 of Article XIII B of the California~~
2 ~~Constitution.~~

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